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Amendment No. 1 to SB1210

**Ramsey
Signature of Sponsor**

AMEND Senate Bill No. 1210

House Bill No. 912*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 1, is amended by adding the following language as a new, appropriately designated part:

§65-1-401. As used in this part, unless the context otherwise requires:

(1) "Authority" means the Tennessee regulatory authority;

(2) "Direct marketing mail solicitation":

(A) Means any letter, card, brochure, flyer, memo, note, visual representation or other communication sent through the United States postal service, originating from Tennessee or elsewhere, to a named or unnamed Tennessee resident that:

(i) Promotes or encourages, directly or indirectly, the purchase of, rental of or investment in property, goods or services;

(ii) Refers a Tennessee resident to another person for the purpose of promoting or encouraging the purchase of, rental of or investment in property, goods or services; or

(iii) Requests a charitable contribution;

(B) Does not include any letter, card, brochure, flyer, memo, note, visual representation or any other communication sent through the United States postal service to a Tennessee resident:

(i) With the resident's prior express permission;

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(ii) In response to the resident's express request; or

(iii) Who is an existing customer. [For the purposes of this part, an "existing customer" includes a Tennessee resident with whom the person engaging in direct marketing mail solicitation has had a prior relationship within the prior twelve (12) months];

(3) "Material unsuitable for minors" means any:

(A) Picture, photograph, drawing, film, video, digital video disc, video game, computer software game or other visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, excess violence or sado-masochistic abuse, and which is harmful to minors; or

(B) Book, pamphlet, magazine, letter, card, brochure, flyer, memo, note, compact disc, visual representation or other communication, however reproduced, or sound recording, which contains any matter listed in subitem (A), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, excess violence or sado-masochistic abuse, and which is harmful to minors;

(4) "Person" means a natural person, individual, partnership, corporation, trust, estate, incorporated or unincorporated association or any other legal or commercial entity, however organized and wherever

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located, engaging in direct marketing mail solicitations to citizens located within the state of Tennessee;

§65-1-402.

(a) The Tennessee regulatory authority shall establish and provide for the operation of a database listing the mailing addresses, organized by zip code, of Tennessee residential households that object to receiving direct marketing mail solicitations containing material unsuitable for minors. It shall be the duty of the authority to have such database in operation no later than January 1, 2005. Such database may be operated by the authority or, alternatively, by another entity under contract with the authority. From the database, the Restricted Solicitations Register shall be compiled and published no later than January 1, 2005. The register shall be organized by household mailing addresses within each zip code and shall not identify any Tennessee resident by name. The register shall be periodically updated.

(b) No later than July 1, 2004, the authority shall promulgate rules that:

(1) Specify the methods by which a Tennessee residential household may give notice to the authority or its contractor of the household's objection to receiving direct marketing mail solicitations containing material unsuitable for minors;

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(2) Specify the methods by which a Tennessee household may give notice to the authority or its contractor of the household's revocation of notice given pursuant to subdivision (1);

(3) Specify the length of time for which a notice of objection shall be effective and the effect of a change of household mailing address upon such notice;

(4) Specify the methods by which such objections and revocations shall be collected and added to the database and, subsequently, reflected on the register;

(5) Specify the methods by which any person desiring to send direct marketing mail solicitations containing material unsuitable for minors will obtain access to the register as required in order to avoid sending solicitations to Tennessee residential household addresses listed on the register; and

(6) Specify such other matters that the authority deems necessary to implement this part in an effective and efficient manner.

(c)

(1) A Tennessee residential household that wishes to give notice to the authority or its contractor of the household's objection to receiving direct marketing mail solicitations containing material unsuitable for minors shall pay to the authority, on or before

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January 1, 2005, and each year thereafter, an annual registration fee, to be established by rule of the authority in an amount not in excess of twenty-five dollars (\$25). The exclusive purpose of the registration fee is to defray regulatory and enforcement expenses pursuant to this act, and the authority shall establish the amount of such fee accordingly.

(2) In electronic format, the Restricted Solicitations Register shall be available without cost. A fee shall be established by rule of the authority for paper copies of the register.

(d) Information contained in the database, other than the mailing addresses and zip codes published within the register, shall not be subject to public inspection or disclosure under title 10, chapter 7. Such confidential information may be used only for the purpose of compliance with this part or in a proceeding or action under this part.

§65-1-403.

(a) Direct marketing mail solicitation containing material unsuitable for minors, of any Tennessee resident at a household address listed on the Restricted Solicitations Register, by any person or entity is a violation of this part.

(b) As used in this subsection, "entity" includes any parent, subsidiary, agent or affiliate of a person.

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(c) The authority is authorized to initiate proceedings relative to a violation of this part or any rules and regulations promulgated pursuant to this part. Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction. Each violation shall be calculated in a liberal manner to deter violations and to protect consumers. Each violation may include each direct marketing mail solicitation containing material unsuitable for minors sent to a named or unnamed Tennessee resident at a household address listed on the register. The authority is authorized to issue investigative demands, issue subpoenas, administer oaths and conduct hearings in the course of investigating a violation of this part, in accordance with the provisions of this title. All civil penalties assessed pursuant to the provisions of this part shall be deposited in the public utilities account in the state treasury.

(d) As supplementary to the powers granted in this part, the attorney general, at the request of the authority, may bring an action in any court of competent jurisdiction in the name of the state against any person or entity relative to a violation of this part or any rules and regulations promulgated pursuant to this part. The courts are authorized to issue orders and injunctions to restrain and prevent violations of this

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part, and such orders and injunctions shall be issued without bond. In any action commenced by the state, the courts are authorized to order reasonable attorneys' fees and investigative costs be paid by the violator to the state. An action brought by the attorney general may also include other causes of action such as but not limited to a claim under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1.

§65-1-404. The remedies, duties, prohibitions, and penalties of this part are not exclusive and are in addition those compiled in title 47, chapter 18, part 15; title 65, chapter 4, part 4; and all other causes of action, remedies and penalties provided by law.

§65-1-405. It shall be a defense in any action or proceeding brought under this part that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent direct marketing mail solicitations in violation of this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2003, the public welfare requiring it.

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